APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 93-2230

MDK, INCORPORATED,
Appellant,

v.

MIKE'S TRAIN HOUSE, INCORPORATED,
a Maryland Corporation,
Plaintiff-Appellee,

LIONEL TRAINS, INCORPORATED,
a Michigan Corporation,
Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of North Carolina, at Greensboro
Richard C. Erwin, Senior District Judge
(CA-92-48-2-MC)

Argued: April 13, 1994

Decided: June 22, 1994

Before RUSSELL, WILKINSON, and HAMILTON, Circuit Judges.

OPINION

WILKINSON, Circuit Judge:

The question before us is whether this court has jurisdiction to review a district court decision compelling a company to submit to discovery where it is not a party

to the underlying litigation. Because we find that this nonfinal discovery order does not fall under the collateral order exception of *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949), we dismiss the appeal for want of jurisdiction.

I.

This appeal traces its origins to a lawsuit filed in Michigan federal court. *See Mike's Train House, Inc. v. Lionel Trains, Inc.*, No. CA 93-60138 (E.D. Mich.). The Michigan litigation involves antitrust allegations in the model trains market. These trains come in a variety of sizes, or "gauges," including O gauge, HO gauge, and N gauge. Both parties to the Michigan litigation manufacture O gauge trains and related products, and the plaintiff in that case, Mike's Train House, is a former distributor for the defendant, Lionel Trains, Inc. Mike's alleges that when it decided to begin manufacturing O gauge trains on its own, Lionel sought an agreement with Mike's to restrict output. Mike's further alleges that its refusal to agree to those output restrictions led Lionel to terminate the distributorship. Mike's maintains that these actions constitute a misuse of monopoly power in violation of section two of the Sherman Act. *See* 15 U.S.C. § 2.

In response, Lionel contends that it is not a monopolist because its share of the total train market—which includes all gauges—is too small. Mike's, however, has contested Lionel's broad view of the market. It has attempted to prove that O gauge products constitute the relevant market and that Lionel monopolizes that market. To support this contention, Mike's has sought information from other model train manufacturers. The information was through subpoenas requesting business records regarding (1) annual sales revenues, (2) total annual revenue on a product by product basis, and (3) the costs of goods sold.

One of these subpoenas was served on MDK, Inc., a North Carolina manufacturer of O gauge products. MDK,

arguing that the subpoena sought confidential commercial information and trade secrets, filed a motion in North Carolina federal district court to quash the subpoena.[1] A hearing on MDK's motion was held before a magistrate judge in July 1993. The magistrate determined that Mike's was acting in good faith in seeking information from MDK. The magistrate further determined that Mike's had a critical need for the information because it would be used to determine the relevant market and the presence of monopoly power. The magistrate therefore concluded that the subpoena could be enforced and ordered the parties to negotiate an appropriate confidentiality order to safeguard the information subject to discovery. The magistrate also ordered Mike's to reimburse MDK for the costs it would incur in complying with the subpoena. This decision was subsequently upheld by the district court, and the parties proceeded to discuss the scope of the confidentiality order. MDK now appeals, claiming the rulings below inappropriately subject its vital business information to discovery.

II.

As a threshold matter, we must determine whether this court has jurisdiction to review the decision below. Circuit courts may hear "appeals from all final decisions of the district courts of the United States." 28 U.S.C. § 1291. This finality requirement is a "historic characteristic of federal appellate procedure," *Cobbledick v. United States*, 309 U.S. 323, 324 (1940), that advances the important interest of avoiding piecemeal review of ongoing district court proceedings. *United States v. Nixon*, 418 U.S. 683, 690 (1974). Such piecemeal review would not only delay the ultimate resolution of disputes by

[1] The original motion requested that a subpoena by Lionel seeking information from MDK be quashed as well. However, the scope of that subpoena has apparently been narrowed to the point where it is moot as far as MDK is concerned. The only issue before us, therefore, is Mike's discovery request.

spawning multiple appeals, *see Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 374 (1981), it would also "undermine the independence of the district judge" in conducing court proceedings, *id.* The rule against appeal of interlocutory rulings thus serves twin purposes. It both avoids the "enfeebling [of] judicial administration" that comes with undue delay, *Cobbledick*, 309 U.S. at 325, and preserves the primacy of the district court as the arbiter of the proceedings before it, *see Firestone*, 449 U.S. at 374.

Consequently, appellate review will generally be limited to those decisions "which end[] the litigation on the merits and leave[] nothing for the court to do but execute the judgment." *Catlin v. United States*, 324 U.S. 229, 233 (1945); *see Miller v. Simmons*, 814 F.2d 962, 964 (4th Cir. 1987). Discovery orders generally do not meet this requirement. *Church of Scientology v. United States*, 113 S. Ct. 447, 452 n.11 (1992); *Barrick Group, Inc. v. Mosse*, 849 F.2d 70, 72 (2d Cir. 1988). Such orders "typically bespeak their own interlocutory character; they are necessarily only a stage in the litigation and almost invariably involve no determination of the substantive rights involved in the action." *United States v. Sciarra*, 851 F.2d 621, 627-28 (3d Cir. 1988). Indeed, the considerations underlying the rule against review of interlocutory orders apply with particular force in the discovery context because that process has a special potential for spawning rulings that aggrieved parties would seek to appeal. The process of turning over private—and often damaging—information to an adversary inevitably creates friction. The sheer number of discovery rulings and the myriad procedural requirements governing them, *see* Fed. R. Civ. P. 26-37, provide fertile soil for the growth of appealable orders. Allowing immediate appeal of the orders resolving discovery disputes would only disrupt and delay district court proceedings and clog the courts of appeals with matters more properly managed by trial courts familiar with the parties and their controversy. *See*

In re Insurers Syndicate for Joint Underwriting, 864 F.2d 208, 210-11 (1st Cir. 1988).

III.

MDK nonetheless contends that the discovery ruling here is reviewable and advances two bases for appellate jurisdiction. First, MDK argues that because Mike's seeks discovery of MDK's trade secrets, review of the discovery decision is proper at this time. Second, MDK maintains that the district court's decision constitutes a collateral order reviewable under the doctrine enunciated in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949). We hold that neither of these rationales confer jurisdiction upon this court to review the order below.

A.

MDK's position that orders mandating the discovery of trade secrets are appealable relies on the Tenth Circuit's holding in *Covey Oil v. Continental Oil Co.*, 340 F.2d 993 (10th Cir. 1965). However, subsequent events have undermined that ruling, and the Tenth Circuit itself recognizes that "the Supreme Court has indirectly overruled the *Covey* exception making it no longer viable." *FTC v. Alaska Land Leasing, Inc.*, 778 F.2d 577, 578 (10th Cir. 1985) (discussing *United Sttaes v. Ryan*, 402 U.S. 530 (1971)).[2] The dangers of a trade secrets exception to the nonappealability of discovery orders should be apparent. A judicially created exception to nonappealability

[2] For similar reasons we decline to rely on the Third Circuit's case, *Smith v. Bic Corp.*, 869 F.2d 194 (3d Cir. 1989). Like *Covey*, that case creates an exception to the general rule that discovery orders are not appealable by allowing review of a district court's refusal to grant a protective order restricting dissemination of trade secrets. *See Bic*, 869 F.2d at 198-99. However, as the Fifth Circuit noted, *Bic* runs contrary to the law of most other circuits, *see Texaco Inc. v. Louisiana Land & Exploration Co.*, 995 F.2d 43, 44 n.4 (5th Cir. 1993) (collecting cases), and we do not follow it here.

for categories of sensitive information is the quintessential slippery slope. Many parties faced with discovery requests are apt to regard the information sought as sensitive or confidential and seek, at a minimum, to delay its disclosure through an interlocutory trip to an appellate court. In addition, trade secrets have widely been held to be discoverable upon appropriate findings and with an appropriate protective order, *see Federal Open Mkt. Comm. v. Merrill*, 443 U.S. 340, 362 (1979) (noting that there is no absolute privilege protecting trade secrets from discovery); *National Util. Serv., Inc. v. Northwestern Steel & Wire Co.*, 426 F.2d 222, 227 (7th Cir. 1970) (same); *Duplan Corp. v. Deering Milliken, Inc.*, 397 F. Supp. 1146, 1185 (D.S.C. 1974) (same); 3 Roger M. Milgrim, *Milgrim on Trade Secrets* § 14.02 [1][a] (1993) (same), and we see no reason to overturn the general rule of nonappealability with respect to them.

B.

We are similarly unpersuaded that jurisdiction over this appeal is conferred by the collateral order doctrine of *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949). *Cohen* recognized that a "small class" of "collateral" decisions may require review even where they do not conclude the litigation in question. *Cohen*, 337 U.S. at 546. In this circuit, an order will fall within this limited exception only if the "order conclusively determines the question in the trial court, resolves an important question independent of the subject matter of the litigation, is effectively unreviewable on appeal from a final judgment or so important that review should not wait upon final judgment, and presents a serious and unsettled question upon appeal." *Bever v. Gilbertson*, 724 F.2d 1083, 1085 (4th Cir. 1984); *see also Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978). MDK claims that the district court's order meets the requirements of *Cohen* because it concludes the question of whether MDK will be forced to submit to discovery, and

because once that discovery takes place, it will be too late for MDK to protect its information.

Such claims have rarely proved convincing, however, and courts have rather routinely declined to extend the collateral order doctrine to discovery rulings. *See In re Insurers Syndicate*, 864 F.2d at 210; *Bever*, 724 F.2d at 1087; *see also M.A. Mortenson Co. v. United States*, 877 F.2d 50, 51-52 (Fed. Cir. 1989) (holding orders imposing certain noncontempt discovery sanctions nonreviewable under *Cohen*); *In re Underwriters at Lloyd's*, 666 F.2d 55, 58 (4th Cir. 1981) (same). We recognize, of course, that this case does not present the routine discovery dispute between two parties to a court proceeding. Despite the fact that MDK is not a party to the Michigan litigation, a North Carolina federal court has ordered it to turn over certain private business information to a competitor engaged in that litigation. We note also that some courts have found jurisdiction to review district court orders *quashing* subpoenas that sought discovery from nonparties where the district court issuing the order was in a circuit different from the one where the underlying action was taking place. *See Periodical Publishers Serv. Bur., Inc. v. Keys*, 981 F.2d 215, 217-18 (5th Cir. 1993); *Hooker v. Continental Life Ins. Co.*, 965 F.2d 903, 904-05 (10th Cir. 1992); *Barrick*, 849 F.2d at 72-74 (2d Cir.); *In re Subpoena Served on the Cal. PUC*, 813 F.2d 1473, 1474-80 (9th Cri. 1987).[3]

We do not believe, however, that these factors support application of the collateral order doctrine to discovery disputes such as this one. Whatever the propriety of allowing immediate review of orders quashing subpoenas seeking discovery from nonparties, that exception plainly

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[3] A few courts have also allowed appeal even where the underlying case and the discovery order arose in the same circuit. *See Heat & Control, Inc. v. Hester Indus., Inc.*, 785 F.2d 1017, 1020-22 (Fed. Cir. 1986); *Ariel v. Jones*, 693 F.2d 1058, 1059 (11th Cir. 1982).

does not apply here as a denial of discovery is not involved. Furthermore, MDK's position as a nonparty does not automatically mean that this controversy constitutes an independent question under *Cohen*. While the district court's order compelling discovery may seem a self-contained piece of litigation when viewed in isolation, that view fails to capture the full scope of these proceedings. The discovery order in question is but one of several discovery requests Mike's has made in order to secure the information necessary to prosecute its claim of monopolization against Lionel. Resolving the issue of whether Mike's will be able to secure this information from MDK perforce impacts the manner in which the Michigan trial will be conducted. Likewise, the time required to resolve an appeal of the North Carolina decision can only delay resolution of the Michigan litigation. Thus, this appeal cannot be considered apart from the course of the main litigation, a necessary prerequisite for application of the collateral order doctrine. *See Cohen*, 337 U.S. at 546-47.

The order at issue here also fails to fulfill the *Cohen* requirement that review be unavailable. While it may be the case that the discovery order could not be effectively reviewed after the conclusion of the Michigan litigation, because MDK is not a party to that litigation and because discovery will have already occurred, that determination does not end our inquiry. The collateral order doctrine's concern with appealability is not simply a narrow concern about the availability of appeal upon final judgment. Rather, the doctrine addresses the worry that an aggrieved party will be denied review entirely. *See Firestone*, 449 U.S. at 376-77.

Here, MDK cannot claim that it could never obtain review absent the appeal at bar. Courts have long recognized that a party sufficiently exercised over a discovery order may resist that order, be cited for contempt, and then challenge the propriety of the discovery order in the course of appealing the contempt citation. *See Corpora-*

cion Insular de Seguros v. Garcia, 876 F.2d 254, 256-57 (1st Cir. 1989) (stating that a nonparty must refuse to comply with a discovery order and be held in contempt before an appeal may be heard); *In re Application of the Am. Tobacco Co.*, 866 F.2d 552, 554 (2d Cir. 1989) (same); *North Carolina Assoc. of Black Lawyers v. North Carolina Bd. of Law Examiners*, 538 F.2d 547, 549 (4th Cir. 1976) (same). Indeed, the Supreme Court has pointed to this path to appellate review as a reason why discovery orders are not appealable under *Cohen*. *Firestone*, 449 U.S. at 377. We recognize, of course, that the contempt route is a difficult path to appellate review, and one that may carry with it a significant penalty for failure. In discovery disputes, however, this difficulty is deliberate. As Judge Friendly has noted, the contempt limitation ensures that the aggrieved party will first take a careful "second look" at the issue in question to determine whether it truly warrants inviting a contempt citation. *National Super Spuds v. New York Mercantile Exch.*, 591 F.2d 174, 180 (2d Cir. 1979). Indeed, the discovery appeals that arise from that calculus will most likely be those of the greatest significance to both parties —the party resisting discovery must risk a citation for contempt, while the party seeking discovery must move for contempt and thereby risk an interlocutory appeal. *Id.* The alternative to the contempt route, by contrast, is one that encourages appeal of every unpalatable discovery ruling.[4]

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[4] While we conclude that we would lack jurisdiction to review the discovery proceedings even if those proceedings had been terminated and the scope of discovery set, we must point out that, as of oral argument, the action below had yet to be concluded. There, both parties indicated that negotiations regarding the parameters of the protective order were not completed. We thus cannot even say that this case meets the collateral order doctrine's initial condition that the order below conclusively determine the question at issue. *See Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 276-78 (1988). A merits review of this discovery issue, when it is uncertain what documents will be turned over and what

IV.

In declining jurisdiction over the controversy here, we follow a long line of cases holding that courts of appeals lack jurisdiction to review orders compelling discovery of nonparties. *See Cobbledick*, 309 U.S. at 326-30; *Alexander v. United States*, 201 U.S. 117, 120-22 (1906); *Garcia*, 876 F.2d at 256-58 (1st Cir.); *Estate of Domingo v. Republic of the Phil.*, 808 F.2d 1349, 1350-52 (9th Cir. 1987); *Alaska Land Leasing*, 778 F.2d at 578 (10th Cir.); *North Carolina Assoc. of Black Lawyers*, 538 F.2d at 548-49 (4th Cir.). Allowing nonparties to immediately appeal discovery decisions affecting them is a recipe for gridlock in the underlying litigation. As it is plain that this court lacks jurisdiction over this appeal, it is hereby

DISMISSED.

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protection those documents will be afforded under the confidentiality order, would also go against the long-settled practice that courts of appeals will not pass upon "hypothetical" cases. *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 241 (1937).

[Filed July 28, 1993]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
NORTH CAROLINA
GREENSBORO DIVISION

2:93MC48

MIKE'S TRAIN HOUSE, INC.,
a Maryland corporation,
Plaintiff,

v.

LIONEL TRAINS, INC.,
a Michigan corporation,
Defendant.

ORDER

This matter comes before the court on motions filed by Mike's Train House and Lionel Trains to compel discovery under subpoenaes they served on non-party MDK, and on MDK's motion to quash the subpoenaes under Rule 45, Fed. R. Civ. P. The court heard the oral argument of counsel in the United States Courthouse in Greensboro on July 26. At the close of the hearing, the court entered the following directives, which it now commemorates by this written order.

MDK has been served with two subpoenas by Mike's Train House and one subpoena by Lionel Trains.[1] The subpoenaes call for the production of categories of docu-

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[1] Actually, one of the two subpoenaes directed by Mike's Train House to MDK was served upon "K-Line Manufacturing Co. by Maury Klein." At oral argument, all counsel recognized that this subpoena should have been directed to MDK, Inc. The court ruled upon the discovery issues that arise from the subpoena, although it also provided that Mike's Train House should re-serve the sub-

ments which, Mike's Train House and Lionel contend, are relevant and important to litigation that is pending in the Eastern District of Michigan. There, in a federal antitrust suit against Lionel, Mike's Train House has alleged that Lionel has abused its monopoly power, in violation of Section 2 of the Sherman Antitrust Act, with respect to its termination of Mike's Train House as its distributor. *See, Mike's Train House, Inc. v. Lionel Trains, Inc.*, No. CA 93-60138 (E.D. Mich). The plaintiff in that action alleges that the relevant market for purposes of the lawsuit is the "O-guage" toy train market. The defendant denies this definition of the relevant market, contending that all gauges of toy trains form a single, larger market. Non-party MDK is a manufacturer or seller in the O-guage market.

MDK has argued to this court that the three subpoenaes should be quashed in their entirety because they invade highly confidential commercial information and would impose an undue burden on MDK. See Rule 45(c)(3)(B)(i). Mike's Train House and Lionel have contended, on the other hand, that a strict confidentiality order (attorneys and experts' "eyes only") can be fashioned and that the burdens of production on MDK are not as great as suggested by MDK and will, in any event, be paid for by the parties issuing the subpoenaes.

Upon hearing the argument of counsel, the court is satisfied that, in balancing the competing interests of the parties before the court, the subpoenaes (as now limited by the parties and as interpreted in open court) should be enforced, with appropriate safeguards and directives. In reaching this conclusion, the court has considered such factors as "the dangers of abuse, good faith, adequacy of protective measures, and the availability of other means of proof." *Centurion Indus. Inc. v. Warren Steurer and Assoc.*, 665 F.2d 323, 325 (10th Cir. 1981).

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poena on the correctly designated non-party (MDK) and should amend its description of the lawsuit mentioned in request number one of the subpoena.

Counsel for MDK does not suggest that Lionel or Mike's Train House are proceeding in bad faith, and the court finds no bad faith. The court finds no "dangers of abuse" in that the subpoena requests (as now limited by Lionel) are not overbroad, and a protective order will prevent disclosure of MDK's confidential information to employees of either Lionel or Mike's Train House or the general public. The court remains confident, as it advised counsel, that a strict protective order (more stringent even than that entered in the principal action) will protect MDK's business information. The court emphasized that the litigants will be given the first opportunity to fashion the terms of the order, guided by the court's explanation the it will require the strictest of orders, with redaction of all identification of MDK from documents produced, so that only outside counsel for Lionel and Mike's Train House know the source and identity of the documents.

Further, the court finds that Mike's Train House and Lionel have a critical litigation need for the documents in question. The documents are needed by Mike's Train House in order to permit its economists to determine the market shares in the O-guage market. As set out in the declaration of Dr. James Zinser (filed in the principal action), the MDK documents are needed (1) to perform a cross-elasticity of demand study, and (2) to compare Lionel's cost/price margins with those of other manufacturers and sellers. These lines of evidence are related to proving the relevant market and monopoly power. Lionel needs the documents it has subpoenaed in order to cross-examine MDK's president during his deposition. MDK has argued that Mike's Train House and Lionel should be required to gather this sort of information from other sources, but the court does not find that the existence of other reliable sources of information of the kind sought has been shown by MDK.

Accordingly, the court has ruled that the subpoenaes shall be enforced, with the following directives:

1. Lionel's requests are enforced only with respect to Request 4 and only insofar as that request is interpreted to call for existing studies, surveys, and reports, rather than underlying data that could simply be related in some way to the topics listed in Request 4.

2. The litigants before the court shall immediately begin work on the terms of a confidentiality agreement, to be structured in accordance with the guidelines announced in open court.

3. MDK shall immediately begin work on an estimate of the time and expense required to comply with the subpoenaes, and Lionel and Mike's Train House shall pay 75% of the estimated cost before the work is undertaken, with the remainder on completion.

4. Mike's Train House may issue a subpoena (in place of its first subpoena) correctly identifying MDK, Inc. as the party to be served and accurately identifying the prior litigation file it now seeks. Counsel for MDK may remove privileged material from the file.

MDK announced at hearing that it intends to object to this order. Time is of the essence in this matter since discovery in the principal action is limited to August 19 and trial is scheduled to begin after Labor Day. Accordingly, the court stayed production under this order pending objection, but instructed the parties to continue to work on the terms of a confidentiality order, the costs of production, and the dates of the MDK deposition so that compliance with the subpoenaes (as limited herein) can be accomplished immediately upon entry of any order affirming this order, assuming that objection under Rule 72(a) is in fact made.

IT IS SO ORDERED.

/s/ R. Trevor Sharp
R. TREVOR SHARP
July 28, 1993 U.S. Magistrate Judge

[Filed Aug. 17, 1993]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
NORTH CAROLINA
GREENSBORO DIVISION

2:9MC48

MIKE'S TRAIN HOUSE, INC.,
a Maryland corporation,
Plaintiff,

v.

LIONEL TRAINS, INC.,
a Michigan corporation,
Defendant.

ORDER

On August 10, 1993, counsel for MDK, Inc. filed notice of appeal from the Magistrate Judge's Order entered July 28, 1993, ruling on Mike's Train House and Lionel Trains' motions to compel discovery under subpoenas they served on non-party MDK and MDK's motion to quash the subpoenaes under Rule 45, Fed. R. Civ. P.

The court finds that the Magistrate Judge's ruling is not clearly erroneous or contrary to law. *See* Fed. R. Civ. P. 72(a). Therefore, the court dispenses with oral argument and hereby AFFIRMS the subject order of the Magistrate Judge.

/s/ Richard C. Erwin
United States District Judge

August 17, 1993

[Filed November 17, 1993]

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 93-2230
CA-93-48-2-MC

MDK, INCORPORATED,
Appellant

v.

MIKE'S TRAIN HOUSE, INCORPORATED,
a Maryland Corporation,
Plaintiff-Appellee

LIONEL TRAINS, INCORPORATED,
a Michigan Corporation,
Defendant-Appellee

ORDER

Appellant filed a motion for stay pursuant to Rule 8 of the Federal Rules of Appellate Procedure and the appellees responded. Appellee Mike's Train House filed a motion to dismiss appeal and the remaining parties responded.

The motion for stay and motion to dismiss are denied.

Entered at the direction of Judge Sprouse, with the concurrence of Judge Hall and Judge Wilkinson.

For the Court,

/s/ Bert M. Montague
Clerk

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

Case Number: 93-60138 AA

MIKE'S TRAIN HOUSE, INC.,
Plaintiff,

v.

LIONEL TRAINS, INC.,
Defendant.

HON. GEORGE LA PLATA
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TO: MDK, Inc. and Murray Klein
Route No. 3, Dodsons Cross Roads
Hillsborough, NC 27278

SUBPOENA IN A CIVIL CASE

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

Place of Deposition CLARK WHARTON & BERRY, 600 Dixie Building, 125 S. Elm Street, Greensboro, NC 27402

Date and Time October 13, 1993, 10:00 a.m.

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Documents identified on Exhibit A hereto.

Place of Deposition CLARK WHARTON & BERRY, 600 Dixie Building, 125 S. Elm Street, Greensboro, NC 27402

Date and Time October 13, 1993, 10:00 a.m.

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

Issuing Officer Signature and Title (Indicate if Attorney for Plaintiff or Defendant)

/s/ Robert J. LaRocca Date October 1, 1993
Attorney for Plaintiff

Issuing Officers Name, Address and Phone Number

Robert J. LaRocca, KOHN, NAST & GRAF, P.C., 1101 Market St., 24th Floor, Philadelphia, PA 19107 (215) 238-1700

EXHIBIT A TO DEPOSITION SUBPOENA OF MDK, INC. AND MURRAY KLEIN

1. The complaint and all deposition transcripts and exhibits thereto in the litigation *MDK v. General Mills, et al.*, C-79-611 D (M.D. North Carolina).

2. Documents setting forth MDK (and K-Line's) yearly sales of O gauge train products (including O-27) for each year 1986 through and including the present.

3. The revenue received by MDK and/or K-Line on a yearly basis and on a product-by-product basis for selling each MDK or K-Line product that is in the following classes or categories of model trains or train equipment for years 1986-1992:

A. Steam engines

B. Diesel engines

C. Passenger cars

D. Freight cars

E. Train sets

F. Train tracks (straight and curved)

4. The invoice cost of each product in paragraph (3) above.

5. All MDK and K-Line price lists for years 1986-92.

6. Product brochures for each product in ¶ 3 above.